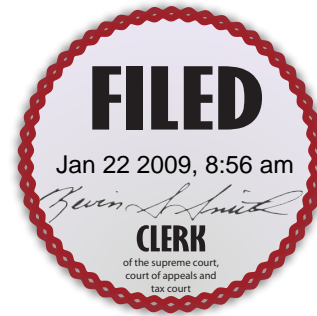


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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BRIAN FREEMAN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0806-CR-524
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Patricia Gifford, Judge  
Cause No. 49G04-0705-MR-93795

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**January 22, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**DARDEN, Judge**

## STATEMENT OF THE CASE

Brian Freeman appeals his convictions for class A misdemeanor carrying a handgun without a license<sup>1</sup> and two counts of murder<sup>2</sup> and his sentence for murder.

We affirm.

## ISSUES

1. Whether the evidence was sufficient to support Freeman's convictions for murder and carrying a handgun without a license.
2. Whether his sentence is inappropriate pursuant to Indiana Appellate Rule 7(B).

## FACTS

In October of 2005, Donsha Jones, also known as "Payday," got into an altercation with Antonio Putman. Putman, who went by the nickname, "Memphis," accused Jones of "trying to rob [him]." (Tr. 306). Shortly thereafter, Jones, his girlfriend, Tiffany Farral (Tiffany), and Tiffany's three children moved to a house on North Reisner Avenue in Indianapolis.

On or about December 31, 2005, Putman telephoned Burnnetter Adams, asking where Jones had moved. She again spoke with Putman during the early evening of February 7, 2006, when he telephoned "and asked for directions to" and "the color of" Jones' house. (Tr. 408). Adams again gave Putman directions to Jones' home.

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<sup>1</sup> Ind. Code § 35-47-2-1; 35-47-2-23.

<sup>2</sup> I.C. § 35-42-1-1.

On February 7, 2006, Tiffany, Jones, and Tiffany's cousin, Venitra, used Venitra's black sports utility vehicle (the "SUV") to run several errands. While they were gone, Tiffany and Jones' next-door neighbor, Cheryl Samples, noticed a blue sedan parked in front of Tiffany and Jones' house. She also saw a man knocking on their door. Samples and the man exchanged greetings. She observed that the man "was dark, pretty dark colored," his hair was in braids, and he "sounded like he was . . . from the south or something." (Tr. 65). She later identified the man as Putman.

In the evening of February 7, 2006, Reba Freeman was watching movies with Freeman, her husband. She and Freeman shared their Indianapolis home with Putman. The Freemans owned a blue Mercury Marquis sedan, which Freeman and Putman both used. Around 10:00 p.m., Reba glanced into Putman's bedroom and saw him "cleaning a large gun," which appeared to be "an Uzi." (Tr. 100). Freeman then "got up and went in there with [Putman] and shut the doors." (Tr. 101). Later that evening, Freeman "got dressed and put on his coat and went back in the room . . . ." (Tr. 102). Shortly afterwards, Freeman and Putman left the house.

Between 11:00 p.m. and 11:30 p.m., two men arrived at the residence of Lillian Jackson, asking to speak with her husband. Jackson's husband, however, was not home. One of the men identified himself as "Memphis." (Tr. 286). Jackson later identified the second man as Freeman. Jackson's home was located approximately two miles from Tiffany and Jones' home.

Venitra, Tiffany, and Jones returned to Tiffany and Jones' home at approximately 8:30 p.m. While Jones stayed at home with the two youngest children, Tiffany and her oldest child drove Venitra home; they returned home in the SUV at approximately 11:30 p.m.

At approximately midnight, Samples returned home from the grocery store and parked on the street in front of her house. As she was getting her bags out of her vehicle, she observed a black SUV drive up and park immediately behind her. She did not see the driver of the SUV. Samples also observed a blue car parked in front of Tiffany and Jones' residence. She recognized the vehicle as the one she had seen earlier that afternoon. After Samples went inside her residence, she "heard some pops[.]" (Tr. 67). When she returned to her vehicle to retrieve her other bags, she noticed that the blue car was gone. She also noticed that Tiffany and Jones' front door was open and saw Tiffany's three-year-old, who "was crying and she was saying, 'My daddy, my daddy, my daddy dead.'" (Tr. 58). She could hear Tiffany screaming, "I need help. Help me." *Id.* Samples telephoned 911.

In the early morning of February 8, 2007, Freeman and Putman woke Reba, asking if she had seen anything on the news. Freeman "said that he had never seen anything like it and how he was impressed with Mr. Putman because Mr. Putman didn't show any hesitation going in that house." (Tr. 108). Freeman "talked about how it felt to have the gun and spraying, how they sprayed the room[.]" *Id.* He also told Reba that they had run "out of ammo" and "that some lady moved or made a noise, and right then . . . [Putman]

fired the last shot.” (Tr. 109). Reba also heard Freeman and Putman discussing “[s]omething about some kids being there, but the kids weren’t in the room or they weren’t going to hurt them.” *Id.* Freeman and Putman also said that the people they had shot had been “in bed.” (Tr. 110). Freeman then told Reba that she “had to take this information to [her] grave or [she would] die.” (Tr. 109). Reba believed they would kill her if she went to the police. Although she initially denied any knowledge about the murders, Reba subsequently gave a statement to police.

Officer James Lekse of the Indianapolis Metropolitan Police Department was the first officer to arrive at the scene. He noticed that the door had been kicked in. He entered the home with his gun drawn and identified himself. He heard “crying or moaning in . . . two different areas of the house.” (Tr. 82-83). As he entered one of the back bedrooms, he saw Jones, who was lying on the bed. Officer Lekse “could tell immediately that he was deceased.” (Tr. 83-84). He then saw Tiffany, who was lying “partially on and off the bed, or on the floor.” (Tr. 84). She was moaning that “she had been shot or she was hurt.” *Id.* Officer Lekse called for assistance and an ambulance. Tiffany later died at the hospital.

An autopsy revealed that Jones had sustained “a total of nine gunshot wounds . . . .” (Tr. 182). The wounds were “consistent with him lying on the bed on his back or in a supine position, and the shooter standing at the foot of the bed shooting him on the bed.” (Tr. 183). Tiffany sustained “10 gunshot wounds.” (Tr. 192). These wounds were “basically all over her body . . . .” *Id.* Her wounds indicated that she was lying or

“facing away from the shooter” when she was shot. (Tr. 197). An examination of the bullets that caused Jones’ and Tiffany’s wounds revealed that they were shot with “two different types of firearms . . . .” (Tr. 201).

Forensic pathologists recovered four spent bullets from Tiffany’s body and six spent bullets from Jones’ body. Harry Liggett, a crime scene specialist with the Indianapolis-Marion County Forensic Service Agency (the “Crime Lab”), collected twelve spent casings, four spent bullets, and one live round from the bedroom in which Tiffany and Jones had been shot. Michael Putzek, a firearms unit supervisor with the Crime Lab, matched ten of the spent bullets—including four taken from Jones’ body and two taken from Tiffany’s body—and all of the spent casings to a specific “Norinco model 320 semi-automatic carbine,” which had been “recovered during a narcotics investigation . . . .” (Tr. 255, 357). The live round found at the crime scene could have been “fired from this Norinco model M320.” *Id.* Putzek identified the Norinco as a semi- automatic carbine that “looks like an Uzi.” (Tr. 257). The remaining spent bullets—two taken from Jones’ body and two taken from Tiffany’s body—were “38 caliber” and “could not have been fired by the Norinco model M320 carbine[.]” (Tr. 256). Rather, they came from an unknown gun.

On May 24, 2007, the State charged Freeman and Putman each with two counts of murder and one count of carrying a handgun without a license, as a class A

misdemeanor.<sup>3</sup> The trial court commenced a joint trial on April 28, 2008. Reba testified as to the events of February 7 and 8, 2006; also, she testified that she had filed for a divorce shortly before the trial. A jury found both Freeman and Putman guilty on all counts.

The trial court ordered a presentence investigation report (the “PSI”) and held a sentencing hearing on May 16, 2008. According to the PSI, Freeman had the following prior convictions: two counts of class B felony burglary in 1982; three counts of class B felony robbery in 1988; one count of class B felony criminal confinement in 2006; one count of class B felony robbery in 2006; and one count of class C felony robbery in 2006. The PSI further indicated that Freeman was on parole when he committed the current offense. As to Freeman, the trial court found as follows:

[T]he Court . . . does find that there are aggravating circumstances by reason of the fact the Defendant has five [sic] felony prior convictions, and again citing that there were children present in the house when the crime occurred, and that each victim received multiple gunshot wounds. The Court also finds as to Mr. Freeman that he has, in fact, shown remorse, which appears to be sincere; however the Court does find that the aggravating circumstances outweigh the mitigating circumstances.

(Tr. 499). The trial court sentenced Freeman to fifty-five years on each murder conviction and ordered that they be served consecutively. The trial court also sentenced Freeman to one year on the carrying a handgun without a license conviction, to run

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<sup>3</sup> The State enhanced Putman’s carrying a handgun without a license charge from a class A misdemeanor to a class C felony as a result of a previous felony conviction.

concurrently with the second murder sentence. Thus, Freeman received an executed sentence of 110 years.<sup>4</sup>

## DECISION

### 1. Sufficiency of the Evidence

Freeman asserts that the evidence was insufficient to support his convictions for murder and carrying a handgun without a license because the State failed to present any eyewitnesses to the shooting or “any direct admission of guilt or directly link . . . [him] to the premises or weapon.” Freeman’s Br. at 6. He argues that the “inferences suggested to link [him] to these crimes were not reasonable,” particularly given Reba’s apparent bias against Freeman. *Id.*

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder’s role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court’s ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

*Drane v. State*, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations and citations omitted).

We will sustain a judgment based on circumstantial evidence alone if the circumstantial

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<sup>4</sup> Putman received an executed sentence of 130 years.



evidence supports a reasonable inference of guilt. *Altes v. State*, 822 N.E.2d 1116, 1121 (Ind. Ct. App. 2005), *trans. denied*.

Here, Reba testified that on the night of the murders, she saw Putman handling what she described as an Uzi. Putman and Freeman left the Freemans' home shortly thereafter. When they returned, they discussed shooting man and a woman. Details of their conversation matched the crime, including that the victims—a man and a woman—had been in bed and that children were present.

Lillian Jackson's testimony placed Freeman and Putman together and in the vicinity of Tiffany and Jones' residence shortly before the murders. Samples testified that she had seen a blue sedan parked in front of the Reisner Avenue location only moments before the shooting. The vehicle matched the vehicle parked in front of the North Reisner residence when Samples spoke with Putman. It also matched that owned by Freeman. The Crime Lab discovered that two guns were used to shoot Tiffany and Jones; one was an Uzi-like gun, similar to the one seen by Reba.

As to any purported bias, Freeman was able to cross-examine Reba, and the jury was able to independently evaluate her testimony. Freeman is asking this Court to reweigh the evidence and judge Reba's credibility, which we will not do. The State presented sufficient evidence to support a reasonable inference of Freeman's guilt.

## 2. Inappropriate Sentence

Freeman asserts that his consecutive sentences of fifty-five years are inappropriate. We may revise a sentence if it is inappropriate in light of the nature of the

offense and the character of the offender. Ind. Appellate Rule 7(B). It is the defendant's burden to "persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review." *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007) (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007).

In determining whether a sentence is inappropriate, the advisory sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed." *Childress*, 848 N.E.2d at 1081. The advisory sentence for murder is fifty-five years.<sup>5</sup> Freeman received two fifty-five year sentences, to be served consecutively. He, however, argues that these sentences should be served concurrently.

Regarding Freeman's offense, the record discloses that he and Putman invaded the sanctity of Jones and Tiffany's home and shot them multiple times, without any regard to the three young children present in the home. It is clear that neither Tiffany nor Jones posed a risk to either Freeman or Putman, as they were shot in their bed. As to his character, Freeman has an extensive criminal history of felony convictions and was on parole when he committed the current offense. In light of the nature of the offense and the character of the offender, we cannot conclude that Freeman's sentence is inappropriate.

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<sup>5</sup> Pursuant to Indiana Code section 35-50-2-3, "[a] person who commits murder shall be imprisoned for a fixed term of between forty-five (45) and sixty-five (65) years, with the advisory sentence being fifty-five (55) years."

Finally, consecutive sentences are appropriate in cases involving multiple killings as they “vindicate the fact that there were separate harms and separate acts against more than one person.”” *Townsend v. State*, 860 N.E.2d 1268, 1273 (Ind. Ct. App. 2007) (quoting *Perry v. State*, 845 N.E.2d 1093, 1097 (Ind. Ct. App. 2006), *trans. denied*). Freeman’s sentence is appropriate as he killed two people.

Affirmed.

RILEY, J., and VAIDIK, J., concur.